



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 26, 1996

Y. Qiyamah Taylor  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-2225

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36948.

The City of Houston (the "city") received a request for information regarding complaints about environmental hazards at certain locations. The city has released the requested documents, but has advised the requestor of the city's belief that the identity of the complainant is confidential under section 552.101 of the Government Code. You assert the complaint alleges a possible violation of state and federal laws, as well as of the city's ordinance regulating neighborhood nuisances, which the city has authority to enforce through criminal penalties.

Section 552.101 excepts from disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision. The informer's privilege, incorporated into the Open Records Act by section 552.101, is actually a governmental entity's privilege to withhold from disclosure the identity of those persons who report violations of law. The privilege recognizes the duty of citizens to report violations of law and, by preserving their anonymity, encourages them to perform that duty. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege protects the identity of a person who reports a violation or possible violation of law to officials charged with the duty of enforcing the particular law. This office has held that the informer's privilege also applies when the informer reports violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 515 (1988) at 2 (quoting Open Records Decision No. 279 (1981) at 2). The privilege may protect the informer's identity and any portion of his statement that may tend to reveal his identity. Open Records Decision No. 515 (1988) at 2. Once the identity of the informer is disclosed to those who have

a cause to resent the communication, however, the privilege is no longer applicable. See Open Records Decision No. 202 (1978).

Because the complainant reported to the city a violation of a city ordinance, which the city is authorized to enforce, any information identifying the complainant is protected from disclosure under the informer's privilege, unless the complainant's identity is known to the alleged violator of the ordinance. You submitted a complaint investigation report containing the identity of an individual who reported to the city a possible violation of the nuisance ordinance. A review of the complaint investigation form, marked "Exhibit 3," reveals the statement of a Mr. Johnson of Bob Johnson & Associates, one of the complained-of properties, that the "complaint came from a disgruntled ex-employee." It is impossible to tell from this statement whether Mr. Johnson is claiming specific knowledge of the identity of the complainant, who he knows to be an ex-employee, or whether he is expressing a generalized belief as to the complainant's identity. If the former is true and in fact the identity of the complainant is already known to Bob Johnson & Associates, then under this office's holdings in Open Records Decision Nos. 515 (1988) and 191 (1978), the privilege is no longer applicable and the complainant's identity must be released. If Bob Johnson & Associates does not know the complainant's identity, then we conclude the city may withhold from disclosure information that identifies or tends to identify the complainant.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID#36948

Enclosures: Submitted documents

cc: Mr. Tim Robinson  
Professional Services Industries, Inc.  
1714 Memorial Drive  
Houston, Texas 77007  
(w/o enclosures)